

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

**MEMORANDUM AND ORDER**

This matter comes before the Court on defendant Ricardo Foulks' *pro se* motion for reconsideration (Doc. 373) of the Court's order (Doc. 368) dismissing his motion for a reduction of his criminal sentence pursuant to 18 U.S.C. § 3582(c)(2) and United States Sentencing Guidelines Manual ("U.S.S.G.") § 1B1.10 (Doc. 333) and granting his appointed counsel's motion to withdraw (Doc. 359). The Court's ruling was based on the fact that Foulks was sentenced based on the career offender provisions of the United States Sentencing Guidelines Manual, so a retroactive change to the relevant conduct provisions did not lower his sentencing range.

Foulks argues that since the sentencing guidelines are advisory under *United States v. Booker*, 543 U.S. 220 (2005), the Court may reduce his sentence. This is not so. As explained in the Court’s prior order, mandatory federal statutory law states that the Court can only reduce a sentence if a defendant’s guidelines sentencing range has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o). See 28 U.S.C. § 3582(c)(2). Regardless of whether that guideline sentencing range is advisory after *Booker*, § 3582(c)(2) prohibits the Court from granting a reduction unless a defendant’s guideline range has been lowered. See *United States v. Lawrence*, 535 F.3d 631, 638 (7th Cir. 2008); *United States v. Forman*, 553

F.3d 585, 588 (7th Cir.), *cert. denied*, 129 S. Ct. 2817 (2009). Foulks' range has not been lowered, and the Court has no jurisdiction to grant a reduction. The Court therefore **DENIES** Foulks' motion for reconsideration (Doc. 373).

**IT IS SO ORDERED.**

**DATED: February 16, 2010.**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**U.S. DISTRICT JUDGE**